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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------------------------------------------------|-------------|----------------------|----------------------------|------------------|
| 09/772,337 | 01/29/2001 | Glenn Ricart | 300 / 4 | 8685 |
| 27538 | 7590 | 09/29/2004 | EXAMINER | |
| KAPLAN & GILMAN , L.L.P. 900 ROUTE 9 NORTH WOODBRIDGE, NJ 07095 | | | BRAGDON, REGINALD GLENWOOD | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2188 | |

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Q/M

| | | |
|------------------------------|---------------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/772,337 | RICART ET AL. |
| | Examiner Reginald G. Bragdon | Art Unit 2188 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1,2,4-6 and 12-19 is/are rejected.
- 7) Claim(s) 3 and 20 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 July 2004 has been entered.

Claim Objections

2. Claims 2-3 and 19-20 are objected to because of the following informalities:

As per claim 2, line 3, "data" should be --date--.

As per claim 19, line 1, "15" should be --18-- since "said computers" were first set forth in claim 18, not claim 15.

All dependent claims are objected to as having the same deficiencies as the claims they depend from.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 now depends from claim 12 and sets forth a “step”. However, claim 12, is a system claim with no steps set forth.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 5-6 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin (6,026,414) in view of Garvey et al. (5,774,667).

As per claim 1, Anglin teaches a data backup system/method where a client 4 is connected to a backup server 6 through a proxy client 10 at a location A. The client initiates a backup operation for a file (step 40, figure 3), where the client makes a call to proxy client 10 (step 44, figure 3) at location A to perform the backup operation (“receiving a request from a subscriber server for backing up at least one data increment”). The file represents a “data increment”. A determination is made as to whether the file is maintained in shared name space on a file server 8 (“provider server”) at location A (“checking said at least one provider server to determine if it has a copy of at least a portion of the identified data increment”). See column 2, lines 46-52, and figure 3, steps 54-60. The file server provides the file to the proxy client, which

in turn provides the file to backup server 6 (“backing up the data increment using the copy...from the provider server if it is found”). See column 2, lines 52-56.

As per claims 12 and 15, these claims are rejected for the reasons set forth for claim 1. Anglin also teaches a first network interconnecting the proxy client 10, file server 8, and backup server 6. This network could be a LAN, WAN, the Internet, etc... See column 3, lines 62-65.

As per claims 1, 12, and 15, Anglin does not teach a “subscriber server” (claim 1), or “one of plural subscriber servers...connected by a second network” (claim 12), or a “subscriber computer...from a computer connected to a second local area network” (claim 15). Garvey et al. teaches, with reference to figure 1, a client/server local area network including a plurality of remote access servers 120, 180 (each a “remote access server”) coupled to remote clients (122, 124, 126, 182, 184, 186). The LAN is coupled through a firewall router to an ISP 135. It would have been obvious to one of ordinary skill in the art to have modified Anglin implement a client/server local area network in place of client 4, as suggested by Garvey et al., because Garvey et al. teaches that local area networks allow computer users at different computer systems to easily share information and hardware. See column 1, lines 17-21.

As per claim 2, Anglin teaches using the file address (source address) to locate the file. See column 6, lines 38-42.

As per claim 5, since the data from the “client 10” must travel further than data from the file server, then there is a delay of some time period in backing up the data.

As per claim 6, Anglin teaches backing up the data to a backup server 6 as set forth above for claim 1.

As per claims 13-14, Anglin teaches using the data from the client 10 when the data is not in global shared name space. Furthermore, if the network interconnecting the proxy, file server, and backup server is a LAN, then the Ethernet interconnecting them is less costly than the Internet connecting location A to location B.

As per claim 16, data travels faster around a LAN than through an Internet connection, and therefore the LAN interconnecting the proxy, file server, and backup server has a higher bandwidth than an Internet connection between location A and location B.

As per claim 17, Anglin backs up files, which represents the “data increment”.

As per claim 18, Anglin teaches a proxy server and a file server connected to the backup server (“backup computer”). See figure 1.

As per claim 19, Anglin teaches that at least one of the computers is a file server 8. See figure 1.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin in view of Garvey et al. in further view of Beeler, Jr. (5,974,563).

As per claim 4, the combination of Anglin and Garvey et al. does not teach computing a checksum to determine if the server has the same copy of the file the client has. Beeler, Jr. teaches calculating and comparing the checksums of each block of a file between a source and target such that only blocks that are different between the source and target are transmitted over the network. See column 15, lines 53-61. It would have been obvious to one of ordinary skill in the art to have modified the combination of Anglin and Garvey et al. to calculate and then compare checksums, as suggested by Beeler, Jr., because this would significantly reduce the amount of network traffic. See column 15, lines 61-64.

Allowable Subject Matter

8. Claims 3 and 20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

All "OFFICIAL" patent application related correspondence transmitted by FAX must be directed to the central FAX number at **(703) 872-9306**:

"INFORMAL" or "DRAFT" FAX communications may be sent to the Examiner at **(703) 746-5693** (after October 14, 2004, the "INFORMAL" or "DRAFT" FAX number will be 571-273-4204), only after approval by the Examiner.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Fourth Floor (receptionist).

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald G. Bragdon whose telephone number is (703) 305-3823 (after October 14, 2004, the telephone number will be 571-272-4204). The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:30 PM and every other Friday from 7:00 AM to 3:30 PM.

The examiner's supervisor, Mano Padmanabhan, can be reached at (703) 306-2903 (after October 14, 2004, the telephone number will be 571-272-4210).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Reginald G. Bragdon

Reginald G. Bragdon
Primary Patent Examiner
Art Unit 2188

RGB
September 27, 2004